



Statement recommends that Company stockholders vote in favor of a proposed transaction whereby the IC Merger Sub Inc. (“Merger Sub”), a wholly-owned subsidiary of IIN Holding Company LLC (“Parent”), will merge with and into Intricon with Intricon surviving as a wholly owned subsidiary of Parent (the “Proposed Transaction”). Pursuant to the terms of the definitive agreement and plan of merger the companies entered into on February 27, 2022 (the “Merger Agreement”), each Intricon stockholder will receive \$24.25 in cash (the “Merger Consideration”) for each Intricon share owned. Merger Sub and Parent are both owned by funds affiliated with Altaris.

1. As discussed below, Defendants have asked Intricon’s stockholders to support the Proposed Transaction based upon the materially incomplete and misleading representations and information contained in the Proxy Statement, in violation of Sections 14(a) and 20(a) of the Exchange Act. Specifically, the Proxy Statement contains materially incomplete and misleading information concerning the analyses performed by the Company’s financial advisor, Piper Sandler & Co. (“Piper Sandler”) in support of its fairness opinion.

2. It is imperative that the material information that has been omitted from the Proxy Statement is disclosed to the Company’s stockholders prior to the forthcoming stockholder vote so that they can properly exercise their corporate suffrage rights.

3. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to Intricon’s stockholders or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants’ violations of the Exchange Act.

## **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9.

5. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

6. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because the Company's proxy solicitor is headquartered in this District.

## **PARTIES**

7. Plaintiff is, and has been at all relevant times, the owner of Intricon stocks and has held such stocks since prior to the wrongs complained of herein.

8. Individual Defendant Nicholas Giordano has served as a member of the Board since 2000.

9. Individual Defendant Mark Gorder has served as a member of the Board since 1996.

10. Individual Defendant Raymond Huggenberger has served as a member of the Board since 2019.

11. Individual Defendant Scott Longval has served as a member of the Board since 2020 and is the Company's President and Chief Executive Officer.

12. Individual Defendant Kathleen Pepski has served as a member of the Board since April 2021.

13. Individual Defendant Heather Rider has served as a member of the Board since March 2020.

14. Individual Defendant Phillip L. Smith has served as a member of the Board since 2016 and is the Chairman of the Board.

15. Defendant Intricon is a Pennsylvania corporation and maintains its principal offices at 1260 Red Fox Road, Arden Hills, Minnesota 55112. The Company's stock trades on the NASDAQ Global Market under the symbol "IIN."

16. The defendants identified in paragraphs 10-14 are collectively referred to as the "Individual Defendants" or the "Board."

17. The defendants identified in paragraphs 10-15 are collectively referred to as the "Defendants."

## **SUBSTANTIVE ALLEGATIONS**

### **A. The Proposed Transaction**

18. Intricon, together with its subsidiaries, designs, develops, engineers, manufactures, and distributes body-worn devices in the United States, Europe, Asia, and internationally. It offers micro-miniature products, microelectronics, micro-mechanical assemblies, high-precision injection-molded plastic components, and assemblies and software solutions for medical devices, hearing healthcare, and professional audio communication devices markets. The Company also provides micro coils for surgical navigation clinical applications, such as interventional pulmonology and electrophysiology; joint engineering and manufacturing services for complex medical devices, including catheters covering a range of applications for cardiology, peripheral vascular, neurology, radiology, and pulmonology; bubble sensors and flow restrictors that monitor

and control the flow of fluid in an intravenous infusion system; and safety needle products for original equipment manufacturing customers. In addition, it offers professional audio headset products used for emergency response needs in the fire, law enforcement, safety, aviation, and military markets; and a line of miniature ear- and head-worn devices used by performers and support staff in the music and stage performance markets. The Company sells its hearing device products, and medical and professional audio communications products directly to hearing instrument manufacturers, distributors, and partnerships; and microphone products to the radio communication and professional audio industries, as well as markets and sells hearing aid devices directly to consumers through direct mail advertising, Internet, and call center. The Company was formerly known as Selas Corporation of America and changed its name to IntriCon Corporation. The Company was incorporated in 1930 and is headquartered in Arden Hills, Minnesota.

19. On February 28, 2022, the Company announced the Proposed Transaction:

ARDEN HILLS, Minn., Feb. 28, 2022 (GLOBE NEWSWIRE) - **Intricon Corporation (NASDAQ: IIN)**, an international joint development manufacturer engaged in designing, developing, engineering, manufacturing, and packaging miniature interventional, implantable and body-worn medical devices, today announced that it has entered into a definitive agreement whereby an affiliate of Altaris Capital Partners, LLC (collectively with its affiliates, “Altaris”), an investment firm focused exclusively on the healthcare industry, will acquire the company. Under the terms of the agreement, Altaris will acquire all outstanding shares of Intricon for \$24.25 per share in a transaction that values Intricon at an equity value of approximately \$241 million. The purchase price represents a meaningful premium of approximately 39% to Intricon’s closing stock price on February 25, 2022.

“We are excited to enter into this transaction with Altaris, which will deliver a compelling valuation to our shareholders and enable us to accelerate the advancement of our joint development manufacturing capabilities in micromedical technology across a broad range of high growth markets,” said Scott Longval, President and Chief Executive Officer. “Our team has done an outstanding job of establishing Intricon as the partner of choice for companies that are bringing truly advanced technology to medical devices. As we enter

the next chapter for our company, we believe that Altaris is the ideal partner to help us further advance our mission.”

### **Transaction Details**

Under the terms of the agreement, Intricon shareholders will receive \$24.25 in cash for each share of Intricon common stock they own. The transaction has fully committed financing from funds affiliated with Altaris.

Intricon’s Board of Directors has unanimously approved the merger agreement with Altaris and recommends that Intricon shareholders approve the proposed merger and merger agreement. Intricon expects to hold a Special Meeting of Shareholders to consider and vote on the proposed merger and the merger agreement as soon as practicable after the mailing of the proxy statement to its shareholders. The transaction is expected to close in the second quarter of 2022, subject to customary closing conditions, including approval by Intricon shareholders and receipt of regulatory approvals. Upon completion of the transaction, Intricon will become a private company and Intricon shares will no longer be listed on any public market.

Under the terms of the merger agreement, Intricon may solicit superior proposals from third parties for a period of 35 days continuing through April 3, 2022, and in certain cases for a period of 45 days continuing through April 13, 2022. In accordance with the merger agreement, Intricon’s Board of Directors, with the assistance of its advisors, intends to solicit superior proposals during this period. In addition, Intricon may, at any time, subject to the provisions of the merger agreement, respond to unsolicited proposals that are reasonably likely to result in a superior proposal. Intricon will have the right to terminate the merger agreement with Altaris to enter into a superior proposal subject to the terms and conditions of such agreement. There can be no assurance that the solicitation process will result in a superior proposal or that any other transaction will be approved or completed. Intricon does not intend to disclose developments with respect to this solicitation process unless and until its Board of Directors determines such disclosure is appropriate or is otherwise required.

### **Transaction Advisors**

Piper Sandler & Co. is serving as exclusive financial advisor to Intricon and Blank Rome is acting as legal counsel. Schiff Hardin LLP and Linklaters LLP are acting as legal counsel to Altaris.

\* \* \*

20. The Board has unanimously agreed to the Proposed Transaction. It is therefore imperative that Intricon's stockholders are provided with the material information that has been omitted from the Proxy Statement, so that they can meaningfully assess whether or not the Proposed Transaction is in their best interests prior to the forthcoming stockholder vote.

**B. The Materially Incomplete and Misleading Proxy Statement**

21. On April 12, 2022, Intricon filed the Proxy Statement with the SEC in connection with the Proposed Transaction. The Proxy Statement was furnished to the Company's stockholders and solicits the stockholders to vote in favor of the Proposed Transaction. The Individual Defendants were obligated to carefully review the Proxy Statement before it was filed with the SEC and disseminated to the Company's stockholders to ensure that it did not contain any material misrepresentations or omissions. However, the Proxy Statement misrepresents and/or omits material information that is necessary for the Company's stockholders to make an informed decision concerning whether to vote in favor of the Proposed Transaction, in violation of Sections 14(a) and 20(a) of the Exchange Act.

**Omissions and/or Material Misrepresentations Concerning Financial Projections**

22. The Proxy Statement fails to provide material information concerning financial projections by Intricon management and relied upon by Piper Sandler in its analyses. The Proxy Statement discloses management-prepared financial projections for the Company which are materially misleading. The Proxy Statement indicates that in connection with the rendering of its fairness opinion, that the Company prepared certain non-public financial forecasts (the "Company Projections") and provided them to the Board and Piper Sandler with forming a view about the stand-alone valuation of the Company. Accordingly, the Proxy Statement should have, but fails to provide, certain information in the projections that Intricon management provided to the Board

and the financial advisors. Courts have uniformly stated that “projections ... are probably among the most highly-prized disclosures by investors. Investors can come up with their own estimates of discount rates or [] market multiples. What they cannot hope to do is replicate management’s inside view of the company’s prospects.” *In re Netsmart Techs., Inc. S’holders Litig.*, 924 A.2d 171, 201-203 (Del. Ch. 2007).

23. For the Company Projections, the Proxy Statement provides values for non-GAAP (Generally Accepted Accounting Principles) financial metrics: Adjusted EBITDA and Unlevered Free Cash Flow, but fails to provide a reconciliation of the non-GAAP metrics to their most comparable GAAP measures, in direct violation of Regulation G and consequently Section 14(a).

24. When a company discloses non-GAAP financial measures in a Proxy Statement that were relied on by a board of directors to recommend that stockholders exercise their corporate suffrage rights in a particular manner, the company must, pursuant to SEC regulatory mandates, also disclose all projections and information necessary to make the non-GAAP measures not misleading, and must provide a reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP. 17 C.F.R. § 244.100.

25. The SEC has noted that:

companies should be aware that this measure does not have a uniform definition and its title does not describe how it is calculated. Accordingly, a clear description of how this measure is calculated, as well as the necessary reconciliation, should accompany the measure where it is used. Companies should also avoid inappropriate or potentially misleading inferences about its usefulness. For example, "free cash flow" should not be used in a manner that inappropriately implies that the measure represents the residual cash flow available for discretionary expenditures, since many companies have mandatory debt service requirements or other



non-discretionary expenditures that are not deducted from the measure.<sup>1</sup>

26. Thus, to cure the Proxy Statement and the materially misleading nature of the forecasts under SEC Rule 14a-9 as a result of the omitted information in the Proxy Statement, Defendants must provide a reconciliation table of the non-GAAP measures to the most comparable GAAP measures to make the non-GAAP metrics included in the Proxy Statement not misleading.

*Omissions and/or Material Misrepresentations Concerning Financial Analyses*

27. With respect to Piper Sandler's *Selected Public Companies Analysis*, the Proxy Statement fails to disclose the financial metrics and multiples of each company selected by Piper Sandler for the analysis.

28. With respect to Piper Sandler's *Selected M&A Transactions Analysis*, the Proxy Statement fails to disclose the financial metrics and multiples of each transaction selected by Piper Sandler for the analysis.

29. With respect to Piper Sandler's *Discounted Cash Flows Analysis*, the Proxy Statement fails to disclose: (i) the projected terminal value at December 31, 2026; (ii) the inputs and assumptions underlying terminal multiples ranging from 11.0x to 13.0x; (iii) the inputs and assumptions underlying the range of discount rates ranging from 12.1% to 14.1%; (iv) the Company's weighted average cost of capital; and (v) the Company's estimated net debt as of March 31, 2022.

30. With respect to Piper Sandler's *Premia Paid Analysis*, the Proxy Statement fails to disclose the transactions selected and the premia paid for those transactions.

---

<sup>1</sup> U.S. Securities and Exchange Commission, Non-GAAP Financial Measures, last updated April 4, 2018, available at: <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>

31. In sum, the omission of the above-referenced information renders statements in the Proxy Statement materially incomplete and misleading in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the special stockholder meeting to vote on the Proposed Transaction, Plaintiff will be unable to make a fully-informed decision regarding whether to vote in favor of the Proposed Transaction, and she is thus threatened with irreparable harm, warranting the injunctive relief sought herein.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

#### **On Behalf of Plaintiff Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 and 17 C.F.R. § 244.100**

32. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

33. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that proxy communications with stockholders shall not contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

34. Defendants have issued the Proxy Statement with the intention of soliciting stockholder support for the Proposed Transaction. Each of the Defendants reviewed and authorized the dissemination of the Proxy Statement and the use of their name in the Proxy Statement, which fails to provide critical information regarding, among other things, the financial projections that were prepared by the Company and relied upon by the Board in recommending the Company’s stockholders vote in favor of the Proposed Transaction.

35. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a). The Individual Defendants were therefore negligent, as they had reasonable grounds to believe material facts existed that were misstated or omitted from the Proxy Statement, but nonetheless failed to obtain and disclose such information to stockholders although they could have done so without extraordinary effort.

36. Defendants were, at the very least, negligent in preparing and reviewing the Proxy Statement. The preparation of a Proxy Statement by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes negligence. Defendants were negligent in choosing to omit material information from the Proxy Statement or failing to notice the material omissions in the Proxy Statement upon reviewing it, which they were required to do carefully. Indeed, Defendants were intricately involved in the process leading up to the signing of the Merger Agreement and the preparation and review of strategic alternatives.

37. The misrepresentations and omissions in the Proxy Statement are material to Plaintiff, who will be deprived of her right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Transaction. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

## **COUNT II**

### **On Behalf of Plaintiff Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act**

38. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

39. The Individual Defendants acted as controlling persons of Intricon within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as directors of Intricon, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Proxy Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of Intricon, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

40. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy Statement and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

41. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of Intricon, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The omitted information identified above was reviewed by the Board prior to voting on the Proposed Transaction. The Proxy Statement at issue contains the unanimous recommendation of the Board to approve the Proposed Transaction. The Individual Defendants were thus directly involved in the making of the Proxy Statement.

42. In addition, as the Proxy Statement sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Proxy Statement purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

43. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

44. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff will be irreparably harmed.

45. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

#### **RELIEF REQUESTED**

WHEREFORE, Plaintiff demands injunctive relief in her favor and against the Defendants jointly and severally, as follows:

A. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from proceeding with, consummating, or closing the Proposed Transaction, unless and until Defendants disclose the material information identified above which has been omitted from the Proxy Statement;

B. Rescinding, to the extent already implemented, the Merger Agreement or any of the terms thereof, or granting Plaintiff rescissory damages;

C. Directing the Defendants to account to Plaintiff for all damages suffered as a result of their wrongdoing;

D. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and expert fees and expenses; and

E. Granting such other and further equitable relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: April 14, 2022

**MELWANI & CHAN LLP**

By: /s/ Gloria Kui Melwani  
Gloria Kui Melwani  
1180 Avenue of the Americas, 8th Fl.  
New York, NY 10036  
Telephone: (212) 382-4620  
Email: gloria@melwanichan.com

*Attorneys for Plaintiff*